Civil Misc. Writ Petition no. 264 (S/S) of 2001-

Budhi Singh Kumai--- Petitioner

Versus

State of Uttaranchal and others Respondents

Hon'ble M.M. Ghildiyal J.

By means of this petition the petitioner has prayed for a direction to respondents to promote him on the post of Naib Tehsildar/Assistant Land Record Officer with effect from 1996 alongwith consequential benefits and further prayed that the respondents be directed to fix the seniority of the petitioner as Registrar Kanungo with effect from 4.4.1989.

Heard Sri H.M. Raturi learned counsel for the petitioner and learned Standing Counsel.

The facts, in brief, are that the petitioner was appointed initially as Patwari and was confirmed on the said post later on. The respondents constituted as committee for selection for the post of Registrar Kanungo and petitioner alongwith one Harsh Mani Chamoli were selected by the selection committee for the post of Registrar Kanungo on 7.1.1986 On 17.1.1986 the District Magistrate Uttarkashi passed an order promoting Sri Harshmani Chamoli as Registrar Kanungo in pursuance to the recommendations of the selection committee. Sri Chamoli was confirmed on the post of Registrar Kanungo on 4.4.1989 However, the petitioner was not promoted in pursuance of the recommendations of the selection committee.

Again on 21.2.1989 the selection committee recommended the name of Sri Munshi Lal Bijilwan alongwith another for promotion to the post of Registrar Kanungo. In pursuance to the recommendation of the selection committee Sri Munshi Lal 1Bijilwan was appointed by the District Magistrate as Registrar Kaungo vide order dated 16.3.1989 and he was confirmed on the said post on 4.4.1989 Since the petitioner who was earlier recommended by the selection committee in the year 1986 was not given promotion, the petitioner made representation dated 12.6.1991 and 12.8.1991 to the District Magistrate which were rejected by the District Magistrate by order dated 6.3.1992 Aggrieved with the rejection order the

petitioner preferred appeal before the Commissioner, Garhwal Mandal on 7.4.1992 which was allowed by the Commissioner on 23.6.1992. While allowing the appeal of the petitioner the Commissioner has stated in the order that inspite of selection of the petitioner for promotion to the post of Registrar Kanungo on 6.1.1986 the petitioner has not been given promotion despite the vacancies arose time to time. The Commissioner rejected the plea of the District Magistrate that since the selection was not in accordance with law the petitioner was not given promotion. The Commissioner Garhwal Mandal has held that by giving promotion to one person out of the list recommended by the selection committee the District Magistrate while denying promotion to others cannot say that the selection was not proper. The Commissioner has further held that the name of the petitioner was not deleted from the select list in accordance with Rule 9 of the U.P. Subordinate Revenue Ministerial (Registrar Kanungos and Assistant Registrar Kanungos) Service Rules, 1958 and as such the petitioner was entitled to be promoted in accordance with the recommendations of the selection committee held in the year 1986 and directed the District Magistrate, Uttarkashi to fix the seniority of the petitioner on the basis of the selection held in the year 1986.

The District Magistrate against the order of the Commissioner dated 23.6.1992 referred the matter to the Board of Revenue on 19.8.1992. On 24.5.1997 the Board of Revenue rejected the reference made by the District Magistrate and directed the District Magistrate to comply the order passed by the Commissioner on 23.6.1992. In pursuance to the order of the Commissioner as well as of the Board of Revenue the District Magistrate on 23.9.1997 requested the Secretary, Board of Revenue for granting promotion to the petitioner as Naib Tehsildar. In reply to this letter the Secretary, Board of Revenue vide letter dated 20.10.1997 informed the District Magistrate that till the services of the petitioner are not regularized as Registrar Kanungo he cannot be granted promotion on post of Naib Tehsildar according to rules. Thereafter the District Magistrate promoted the petitioner as Registrar Kanungo vide order dated 20.11.1997 and regularized the petitioner on the said post vide order dated 1.12.1997.

The submission of the learned counsel for the petitioner is that inspite of the order of the Commissioner Garhwal Mandal dated 23.6.1992 the

seniority of the petitioner has not been fixed on the basis of selection held in the year 1986. He has further submitted that the District Magistrate has recommended vide letter dated 23.9.1997 that the petitioner is entitled for the seniority as Registrar Kanungo with effect from 4.4.1989 and keeping in view of the seniority the petitioner may be promoted on the post of Naib Tehsildar. The learned counsel for the petitioner has further submitted that in case the petitioner got promotion on or before 4.4.1989 that after completion of seven years service he was entitled to be promoted as Naib Tehsildar in the year 1996 but due to inaction on the part of the District Magistrate inspite of the order of the Commissioner Garhwal Mandal and the Secretary, Board of Revenue, the petitioner has suffered irreparable loss. I find force in the submission of the learned counsel for the petitioner. The Commissioner while allowing the appeal of the petitioner on 23.6.1992 directed the District Magistrate to promote the petitioner and fix his seniority on the post of Registrar Kanungo on the basis of selection held in the year 1986. The Board of Revenue confirmed the said order. Inspite of all this, the petitioner was not promoted and his seniority has not been fixed as directed by the Commissioner.

Learned Standing Counsel has filed counter affidavit. In paragraph no. 5 of the counter affidavit it is stated that in the seniority list of Patwaris the name of the petitioner finds place at serial number 52 whereas in paragraph no. 16 it has been stated that the name of Sri Munshi Lal Bijilwan is at serial no. 52. IN paragraph no. 22 of the counter affidavit it is stated that Sri Harshmani Chamoli and Sri Munshi Lal Bijilwan both are senior to the petitioner as Patwaris. The Commissioner had directed to fix the seniority of the petitioner on the post of Registrar Kanungo on the basis of selection held in the year 1986. Certainly Sri Munshi Lal Bijilwan was not selected in the year 1986 and further the name of the petitioner was not removed from the select list of 1986 under Rule 9 of the Rules of 1958. In paragraph no. 6 the respondents have submitted that both Sri Munshi Lal Bijilwan and the petitioner possessed same qualification whereas in paragraph no. 8 it is stated that Sri Munshi Lal Bijilwan possessed higher qualification than the petitioner. However, no document has been filed in support of the above averment. In paragraph no. 18 of the counter affidavit it is stated that since the petitioner has not completed seven years service as Registrar Kanungo

he cannot be promoted on the post of Naib Tehsildar. As already observed above in case the petitioner was promoted on or before 4.4.1989 in pursuance to the order dated 23.6.1992 of the Commissioner as well as of the Board of Revenue the petitioner would have been completed seven years service as Registrar Kanungo in the year 1996 and was entitled for promotion as Naib Tehsildar in the year 1996 itself. The learned counsel for the petitioner Sri H.M.Raturi has submitted that in case the seniority of the petitioner is fixed as directed by the Commissioner, Garhwal Mandal, Pauri as well as by the Secretary, Board of Revenue, the seniority of any body in the department will not be affected because Sri Harsh Mani Chamoli who was promoted in the year 1986 was senior to the petitioner and the person, namely, Munshi Lal Bijilwan though junior to the petitioner who was promoted as Registrar Kanungo on 4.4.1989 has since been retired long back.

For the reasons stated above the writ petition is allowed. The respondents are directed to fix the seniority of the petitioner as directed by the Commissioner, Garhwal Mandal by order dated 23.6.1992 and order dated 24.5.1997 of the Board of Revenue with all consequential benefits. No order as to costs.

(M.M. Ghildiyal J.)

September 15, 2003.
MPS